IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 25499 of 2007(T)

OS.386/2006 of I ADDL.M.C.,NEYYATTINKARA

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PETITIONER:

NARAYANAN NAIR @ NARAYANAN KUTTY,
S/O.KRISHNA PILLAI,AGED 67 YEARS,
RESIDING AT DEEPTHI,VADAKKECOTTA (THOPPIL),
NEYYATTINKARA,THIRUVANANTHAPURAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS:

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1. PARVATHY NAIR,W/O.RAMAN NAIR,
AGED 62,EASARAVILASWOM,SASTHAMANGALAM,
THIRUVANANTHAPURAM.

2. ANIL KUMAR,S/O.SANKARAN KUTTY,AGED 32,
RESIDING AT AISWARYA,CSM NAGAR,EDAPAZHANJI,
SASTHAMANGALAM VILLAGE,THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.25499 OF 2007

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Dated this the 22nd day of August 2007

JUDGMENT

This writ petition is preferred against the order of the Sub Court, Neyyattinkara in C.M.A.Nos.33 of 2006 and 8 of 2007. C.M.A.No.33 of 2006 is preferred against the order of the I Addl. Munsiff's Court, Neyyattinkara refusing to grant an order of injunction in favour of the plaintiff in the case. The plaintiff still maintains his right and is in possession of the property on the strength of an oral agreement to sell in the year 1989. According to him, he entered into an agreement with the first defendant for purchase of the property for a consideration of Rs.1,50,000/- and paid an amount of Rs.25,000/- towards consideration and that he has been inducted into possession on the basis of the same and now attempt is made to dispossess him and therefore he is entitled for an order of injunction.

2. On the other hand, the first defendant would totally deny the agreement to sell with the plaintiff and would further contend that the property has been assigned in favour of the 2nd defendant in the year 2006 and he is in possession of the property on the strength of that document and

therefore the plaintiff is not entitled to any relief. The trial court refused to order injunction in favour of the plaintiff on the ground that it is not convinced about the agreement to sell at all. The court also found that only a cheque for Rs.25,000/- drawn by him is proved and further it did not accept the document of 2006 showing that he has paid building tax to the property and therefore refused the relief to him whereas granted the relief to the 2nd defendant on the ground that he is in possession of the property by virtue of a valid registered instrument executed in the year 2006. In the C.M.As, learned counsel for the plaintiff produced documents and the court did not accept the same holding that there are no grounds under Order 47 Rule 27 C.P.C. to receive those documents. The court referred to the building tax receipts and found that it does not relate to that building at all and it has even observed that the car shed is not even numbered. Further it has to be stated that if a person has invested such an amount, one will not expect him to sleep over the matters for years together or if the delay is on account of the litigation pending, at least a prudent plaintiff would have taken the document for the existence of the agreement to sell. It is also not done in this case. In a suit of this nature, that too, under the colour of the right of an agreement to sell unless the court is prima facie satisfied about the agreement to sell. The court is not bound to grant an injunction for the

reason that the plaintiff does not have a case and that he has come into possession of the property by any other means other than by way of the agreement to sell. I am not elaborately dealing with the matter because it may affect the rights of the parties at a later stage. I feel that the materials are not sufficient to invoke the jurisdiction under Article 227 of the Constitution of India to interfere with the order for the reason that I do not find any material irregularity or jurisdictional error committed by the court below.

Therefore the writ petition is dismissed. But, I make it clear that when the trial court is to dispose of the matter, it shall do it untrammelled by the observations contained in any of the orders passed on the interlocutory stage including this judgment passed by me and decide the matter in accordance with law. So far as the other C.M.A. is concerned, it has to be held that the 2nd defendant is armed with registered instrument and there is no case for the first defendant that he has not executed the document in favour of the second defendant. Prima facie it is sufficient to establish his case. Therefore that order is not to be interfered with. The trial court is directed to dispose of the matter as expeditiously as possible.

M.N.KRISHNAN, JUDGE

Cdp/-